



*of Corrections*, 259 F.3d 1310 (11<sup>th</sup> Cir 2001)(incorrect advice by counsel as to when limitations period began to run does not justify equitable tolling), *cert. denied*, \_\_ U.S. \_\_, 122 S.Ct. 1965, 152 L.Ed.2d 1025 (2002). Limited access to research materials due to incarceration alone cannot be an extraordinary circumstance justifying equitable tolling or the limitation period would be meaningless. Further, petitioner has not presented any evidence “to support a connection between his untimely filing and alleged inadequacies in the prison library.” *Helton*, 259 F.3d at 1314.

Petitioner argues that because the Eleventh Circuit has not decided whether there is an “actual innocence” exception to the one year statute of limitations, he “has a right to... a fair and i[m]partial jury of his peers. Petitioner is not entitled to a jury trial based on a petition for writ of habeas corpus. Petitioner had his jury trial during his criminal trial.

Petitioner further argues that the indictment charged him with selling cocaine to Michael Salomonski but the record reflects that Salomonski denied actually purchasing drugs from petitioner. At trial, Salomonski testified that petitioner refused to make the exchange directly with Salomonski insisting that Bill Gothard give petitioner the money and that Bill Gothard hand the cocaine to petitioner. (Tr. pp. 38, 44, 45, 54, and 55). It was clear from the testimony that Salomonski was present during the transactions and that petitioner was aware that Salomonski was the “real” purchaser/recipient. At any rate, this argument of petitioner does not go to the “actual innocence” exception but rather to the sufficiency of the indictment and evidence.

Petitioner’s objections are due to be overruled. A separate final judgment consistent with this memorandum of opinion will be entered simultaneously herewith.

DONE this the 30<sup>th</sup> day of July, 2002.

A handwritten signature in black ink, appearing to read "Edwin L. Nelson", written over a horizontal line.

EDWIN L. NELSON  
UNITED STATES DISTRICT JUDGE